

**Comments to the Legislative Research Commission's Committee on
Dispute Resolution Options for Homeowners, Associations and Governing Entities
March 28, 2018**

Good afternoon. My name is Jim Slaughter. Thank you for inviting me to address the Committee.

By way of background, I'm a community association attorney with Black, Slaughter & Black, which has one of the state's largest HOA/condo practices. I was the first attorney in North Carolina inducted as a Fellow into the College of Community Association Lawyers (CCAL) and served as CCAL's 2014 national President. In addition I served as 2016 President of the North Carolina Chapter of the Community Associations Institute.

Since this meeting is about association disputes, I'll start by mentioning that almost all lawsuits filed in North Carolina's District or Superior Courts are currently sent to either mediation or arbitration. So that we're using the same terms—in a "mediation" the parties sit down with a neutral party and try to talk through and resolve their dispute. In an "arbitration" an independent third party is appointed to act like a judge and rules on the matter. These processes are called Alternative Dispute Resolution, or "ADR."

I strongly encourage ADR to parties in any dispute. Early in my career I heard many cases as a District Court arbitrator. I've been a certified Superior Court Mediator for over 20 years and participated in hundreds of mediations, whether as mediator or representing homeowners or associations. ADR often provides a faster and less expensive alternative to litigation. That said, in looking at the Committee's charge, I don't know how the General Assembly easily forces more dispute resolution on homeowners or associations that are not involved in litigation.

As to mediation, in 2010 the General Assembly enacted House Bill 278, which became NC General Statute § 7A-38.3F. That law mandates that community associations notify members each year of their right to request mediation. Mediation by its nature is voluntary. You can't mandate that parties settle a dispute. To require parties who are not in a lawsuit and do not wish to mediate to attend and pay for mediation—since mediation has costs—will increase costs to the homeowner and association, but likely places them no closer to a resolution of their dispute.

As to arbitration, parties can agree by contract to binding arbitration, but I don't believe that mandatory arbitration by statute could be anything other than non-binding, which means it's not final. The State Constitution guarantees the right to enforce or protect "private rights or the redress of private wrongs" in court. To require parties who are not in a lawsuit, have no agreement to arbitrate, and do not wish to arbitrate to attend and pay for an arbitration—since arbitration has costs—will increase costs to the homeowner and association, but likely places them no closer to a resolution of their dispute.

Disagreements between owners and community associations are private contract disputes. There is nothing to prevent mediation or arbitration if that is what the parties desire. Numerous mediation centers and private mediators across the state will hear association disputes. The North Carolina

Chapter of the Community Associations Institute¹ just launched its Community Association Mediation Program, where associations or owners can ask that any dispute be mediated at minimal cost. The mediators, who must be agreed to by the parties, include some of the most respected community association attorneys and managers in the state.

You likely will get requests to provide a free resolution process for HOA/condo owners. Any such process, whether free or not, will create additional work for community associations. Recognize that community associations are nonprofits and don't have extra funds for additional administrative obligations. Community associations exist through written contracts with owners to provide certain services, such as power, water, and insurance. Associations pay for those services through assessments from the owners. Association finances are pretty much a zero-sum game. Any cost to the association due to additional government regulation has to be passed on to the owners, resulting in higher costs for all residents.

And fundamentally, how are association owner disputes different than other contracts regarding real estate or anything else? In such matters, the parties are advised to try and work out differences and, if that isn't possible, to talk to an attorney or go to court. Also, if the state provided a free process for any association dispute, no matter how outlandish, how many owners would request that free assistance? Two per association? There are some 15,000 community associations in North Carolina. That would be 30,000 disputes, which is not something that could be handled without significant resources and infrastructure.

As the Committee hears from unhappy owners, keep in mind the many homeowners who are satisfied with their associations. Twenty vocal owners may show up today, but some 2.8 million residents live in associations. Unless 28,000 owners have complained, you haven't heard dissatisfaction from even 1% of residents. You likely won't hear more complaints because the General Assembly has set up a host of ways to resolve association disputes—most associations vote on leaders annually and there is a straightforward statutory process for removing unwanted board members. And there is no requirement that anyone continue to live in an association if they have become dissatisfied. Based on our state population of 10.8 million, more than 70% of the state doesn't reside in an association.

It's worth noting that Zogby surveys year after year show a vast majority of residents in associations are generally satisfied:

- 87% rate their overall community association experience as positive or neutral
- 88% say their association's rules protect and enhance property values or have a neutral effect
- 84% say that members of their elected governing board "absolutely" or "for the most part" serve the best interests of their communities

As this Committee examines changes to dispute resolution for owners and associations, I ask that you keep those satisfied owners in mind. With options for dispute resolution already in place, please don't create a process that adds complication for volunteer board members and adds new costs to owners and their associations.

¹ CAI is an international membership organization with 35,000 members that include association board members and other homeowner leaders, community managers, association management firms and other professionals who provide products and services to associations.